



सत्यमेव जयते



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

Maharashtra Water Resources Regulatory Authority

No.MWRRA/2017/Legal/Case No.9 of 2017/120

Date : 05/03/2018

Case No 9 of 2017

And


Case No. 7/2016

In the matter of

An Appeal against the Order of PDRO & CE (SP), Pune regarding equitable distribution of water under Section 12(6) of MWRRA Act to the farmers of Bhalavani Branch No. 2 of Nira Right Bank Canal

Please find herewith a copy of MWRRA Order No. 4/2018 dated 05/03/2018 in the above matter.

Encl : As above


(Dr. Suresh Kulkarni)
Secretary

Copy for information and necessary action to:

1. Adv. S. M. Bhinge, R/o Shirbhavi, Taluka Sangola, District Solapur for by *Shri. Nagesh R. Kakade R/o Tandulwadi & o.*
2. Superintending Engineer, Pune Irrigation Circle, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune - 411 011.
3. Executive Engineer, Nira Right Bank Canal Division, Phaltan, District Satara - 415523.



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महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

Maharashtra Water Resources Regulatory Authority

ORDER No. 4/2018

In the matter of

A Petition against the Order of PDRO regarding equitable distribution of water to the farmers of Bhalavani Branch No. 2 of Nira Right Bank Canal under Section 12(6) of MWRRA Act

Case No. 9/2017

Petitioners :

1. Shri. Nagesh R. Kakade, Tandulwadi (Tq. Malshiras)
2. Shri. Bausaheb K. Shinde, Madoli Shendechinch, (Tq. Malshiras)

.....All through Adv. S. M. Bhinge.

Versus

Respondents :

1. Superintending Engineer, Pune Irrigation Circle, Pune
2. Executive Engineer, Nira Right Bank Canal Division, Phaltan
3. Sub-Divisional Engineer, Malshiras Irrigation Sub-Division, Malshiras

and

Case No. 7/2016

Petitioners :

1. Shri. Suresh R. Dethe, Dhondewadi (Tq. Pandharpur)
2. Shri. Jayant D. Shinde, Bhalavani (Tq. Pandharpur)

.....All through Adv. S. M. Bhinge.

Versus

Respondents :

1. Superintending Engineer, Pune Irrigation Circle, Pune
2. Executive Engineer, Nira Right Bank Canal Division, Phaltan



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CORAM : SHRI K. P. BAKSHI, CHAIRMAN

SHRI. V. M. KULKARNI, MEMBER (WR ENGG.)

Date : 5 March 2018

1. A Petition was filed by Adv. S. M. Bhinge on behalf of Petitioners on October 24, 2017. The Petition is in fact an Appeal against the Order of PDRO [in this particular case the Chief Engineer CE (SP), Water Resources Department, Pune] dt. September 11, 2017. The substance of the prayers is as per following ;

- a) The present appeal be got admitted.
- b) The decision of the PDRO delivered on September 11, 2017 be set aside.
- c) The Respondents be directed to distribute the water equitably in proportion to the land holding in pursuance of Section 12(6) of the MWRRA Act, 2005 to the beneficiary farmers of Bhalavani irrigation Section No. 2 under Bhalavani branch No.2 of NRBC during all the 3 irrigation seasons.
- d) The Respondents be directed to cater equal number of rotations to the Bhalavani Distributary No.2 along with Phaltan and Malshiras.
- e) The Respondents be directed to put up the provisions in Maharashtra Irrigation Act (1976), MWRRA Act (2005), MMISF Act (2005) and the State Water Policy (2003) in the agenda note which is kept for the consideration of the Canal Advisory Committee.

Hearing in the matter was conducted on January 4, 2018.

BRIEF BACKGROUND OF THE CASE

2. The Petitioners are the beneficiaries of Branch No.2 of Nira Right Bank Canal. The Petitioners have approached the Authority under Section 22(3) of the MWRRA Act, 2005 having aggrieved by the Order of the PDRO dated September 11, 2017.

The Petitioners vide their application No.1 / 2017 had approached the PDRO on March 18, 2017. PDRO after giving an opportunity of hearing on April 15, 2017 and May 6, 2017 has passed his order on September 11, 2017.



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The prayers of the Petitioners in their original application dated March 18, 2017 were :

- a) Distribute water equitably in Hot Weather season of 2016-17 under Section 12(6) of the MWRRA Act, 2005.
- b) The quota approved by the Canal Advisory Committee be corrected.
- c) Second rotation be given in Hot Weather season of 2016-17.

The PDRO has disposed of the Petition vide his order dated September 11, 2017. The PDRO in its order ruled that the Section 12(6) of the MWRRA Act, 2005 is not applicable to the Petitioners as the Water Users Association (WUA) is not yet formed. However, the PDRO in its order has given following important directions :

- a) The process of formation of WUA be expedited.
- b) The lining be provided to the Branch No.4 to reduce the seepage of water.
- c) The flow measurement devices be provided for building trust.

SUMMARY OF THE ARGUMENTS OF PETITIONERS

3. When asked about *locus standi*, Adv. S. M. Bhinge made it clear that the Petitioners are individual farmers not representing any of the Water User Associations (WUAs).

4. Adv. S. M. Bhinge further made it clear that he had approached the Authority on behalf of two beneficiaries from Solapur district in October 26, 2016 with the same set of prayers. This case is numbered by the Authority as Case No.7 of 2016. One hearing was conducted on December 2, 2016 under the Chairmanship of Smt. Malini Shankar - the then Chairman, MWRRA. He therefore, requested to link the case with the current case (Case No.9 of 2017). The prayers of the Petitioners of Case No. 7 of 2016 were as follows;

- a) The project authority be directed to implement Section 12(7) of the MWRRA Act by delivering water from tail to head.
- b) In order to achieve the equitable distribution of water in the command of the project as per Section 12 (6) of the MWRRA Act, every land holder be given quota for the use based on the land holding during all three seasons



of the year; also it may be directed as to how much water will be supplied to every distributory during Rabi & Hot Weather.

- c) Hereafter, the rotations be given in specified time period as per the water demand.
- d) WRD officers be directed to complete the rotations during every season as decided from tail to head manner.
- e) The farmers under the command of Branch 2 be supplied planned rotations with full capacity.

In this petition, the Petitioners insisted for equitable distribution of water as provided under Section 12(6) of the MWRRA Act, 2005.

SUMMARY OF THE ARGUMENTS OF RESPONDENTS

5. Shri. Siddhamal, the Executive Engineer, Nira Right Bank Canal Division, Phaltan submitted that the delineation of the command area under Bhalavani Branch No. 2 of NRBC has been done as per the provision in Section 6 of MMISF Act, 2005. He also apprised that the entitlement proposal in respect of this branch will be submitted shortly (approximately within two months)

DECISION OF THE AUTHORITY REGARDING CLUBBING CASE NO. 7 OF 2016 AND 9 OF 2017

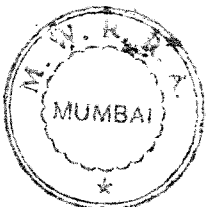
6. Prayers in both the Petitions being same, the Authority decided to club both the Petitions and decide them together.

RELEVANT LEGAL PROVISIONS

7. Relevant Legal Provisions are;

MWRRA Act, 2005: Section 2(1) of the Act reads as follows:

(b) "allocation" means the portion or percentage of an Entitlement declared annually or seasonally by the Prescribed Authority to be made available to the holder of an Entitlement based upon the availability of water for the period within the sub-basin, river basin, project or storage facility for that season or year; and during water crises or scarcity on the principle of proportionate entitlement;



(i) "Entitlement" means any authorization by any River Basin Agency to use the water for the purpose of this Act;

(s) "Quota" means a volumetric quantity of water made available to an Entitlement holder, which is derived by multiplying an Entitlement by the annual or seasonal allocation percentage;

MWRRA Act, 2005: Section 12 (6) of the Act reads as follows:

(a) for equitable distribution of water in the command area of the project, every land holder in the command area shall be given Quota;

(b) the Quota shall be fixed on the basis of the land in the command area:

(c) in order to share the distress in the river basin of sub-basin equitably, the water stored in the reservoirs in the basin or sub-basin, as the case may be, shall be controlled by the end of October every year in such way that, the percentage of utilizable water, including kharif use, shall, for all reservoirs approximately be the same:

MWRRA Act, 2005: Section 12 (7) of the Act reads as follows:

The Authority shall ensure that the principle of "tail to head" irrigation is implemented by the River Basin Agency.;

MWRRA (Amendment & Continuance) Act, 2011: Section 31A of the Act reads as follows:

Notwithstanding anything contained in this Act or any other law for the time being in force, the term "Entitlement" shall apply only to such areas where compliance of all relevant provisions including delineation under the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 is made.

Explanation- In respect of the areas where the Maharashtra Management of Irrigation Systems by Farmers Act, 2005, has not become applicable, section 78 of that Act shall apply & be effective.

MMISF Act, 2005: Section 5 of the Act reads as follows:

- For the purpose of this Act, Appropriate Authority may, by notification in the Official Gazette, delineate, on hydraulic basis and having regard to the administrative convenience, the command area of an irrigation project into an area under the Management of Irrigation System by Farmers, for which there shall be constituted



Water Users' Association under this Act and may by like notification from time to time, alter their limits, by ---

(i) amalgamating or dividing the Water Users' Associations;

(ii) increasing an area of any Water Users' Association;

(iii) reducing an area of any Water Users' Association:

Provided that, no such notification making amalgamation, division, or in any way altering the boundaries of the Water Users' Association shall be issued unless a reasonable opportunity, as prescribed, is given to the Water Users' Association and holders or occupiers of the lands likely to be affected thereby.

Provided further that, no Water User's Association and land holder or occupier shall be eligible to obtain membership of any other Water Users' Association unless 'No dues Certificate' of the previous Water Users' Association, is produced.

MMISF Act, 2005: Section 6 of the Act reads as follows:

(1) A Canal Officer not below the rank of an Executive Engineer, duly empowered in this behalf, may, by notification in Official Gazette and in accordance with the rules, on hydraulic basis and having regard to the administrative convenience delineate command area of Water Users' Association at Minor Level separately within lands under irrigable command and declare it to be an area of operation of Water Users' Association at Minor Level for the purposes of this Act. The area of operation so declared may include both, the flow and lift irrigation.

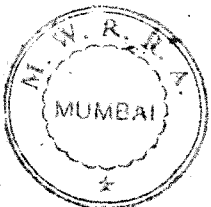
(2) The notification under sub-section (1) shall contain,-

(a) a certified copy of updated map of area of operation of Water Users' Association showing prescribed details necessary for Operation and Management of such Association ; and

(b) a certified copy of updated list of landholders and occupiers of land with prescribed details within the area of operation of Water Users' Association at Minor Level.

MMISF Act, 2005: Section 8 of the Act reads as follows:

(1) When an area of operation of a Water Users' Association at Minor Level has been delineated under section 6, the holders and occupiers of the land so delineated shall form a Water Users' Association. Such Water Users' Association shall be registered in the prescribed manner.



Provided that, where no such Water Users' Association is constituted, the Appropriate Authority may, entrust the functions of such Water Users' Association to Government agency or Cooperative societies or any other Water Users' Association in the manner prescribed, till such Association is constituted and functional.

(2) All the holders and occupiers in delineated land of Water Users' Association at Minor Level shall be deemed to be the members of Water Users' Association at Minor Level, and shall constitute the General Body of the Water Users' Association and shall have right to vote as prescribed.

MMISF Act, 2005: Section 21 of the Act reads as follows:

(1) There shall be an agreement between Water Users' Association (WUA) and the upper level Water Users' Association or the Canal Officer, of the rank of Superintending Engineer or Executive Engineer as the case may be, within three months of the constitution of the concerned Water Users' Association. Such agreement shall contain the contents mentioned in section 29.

MMISF Act, 2005: Section 22 of the Act reads as follows:

(5) - On preparation of such list of items of works under subsection (4), the Canal Officer not below the rank of an Executive Engineer duly empowered in this behalf, shall inform the Water Users' Association, the schedule of completion of repairs and renovation, if any required, to ensure that water can be delivered to all the command area of the canal system, the designed and specified period. The schedule of completion for the works of Priority-I, shall not extend beyond a period of twelve months, from the date of joint inspection, except with the consent of the concerned Water Users' Association. After completion of Priority-I works, the system will be tested and handed over to WUA. If the Water Users' Association fails to take over the system, within one month of such testing, it will stand handed over to the Water Users' Associations. The participation of Water Users' Association in repairs and renovation works shall be as prescribed. After such handing over of the system, Priority-II works shall be completed within a period not exceeding eighteen months. The Canal Officer shall have power to extend such period in exceptional circumstances.

MMISF Act, 2005: Section 23 of the Act reads as follows:

(1) For every area of operation delineated under this Act or where a Water Users' Association for flow irrigation has been duly constituted under this Act, it shall be the duty of the Canal Officer to provide a proper measuring device or devices on the canal at the point of supply to Water Users' Association and ensure its proper working from time to time.



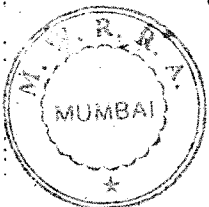
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MMISF Act, 2005: Section 28 of the Act reads as follows:

- (1) *It shall be the responsibility of the Appropriate Authority to supply water as per the Applicable Water Use Entitlement, in the prescribed manner to the Water Users' Associations on a bulk basis measured volumetrically.*
- (2) *It shall be the responsibility of the Water Users' Association to supply water equitably in its area of operation as per Applicable Water Entitlement of each member.*

MMISF Act, 2005: Section 29 of the Act reads as follows:

- (1) *Supply of water for irrigation to any Water Users' Association at any level within the area of Management of Irrigation Systems by Farmers shall be in accordance with the Agreement to be signed by the Chairperson of Water Users' Association and the Chairperson of upper level of Association or the Canal Officer duly empowered in this behalf as the case may be. A note of such agreement shall be kept with the Water Resources Department in the prescribed manner.*
- (2) *The agreement shall, inter alia, contain the provisions for following:-*
 - (i) *Objectives of the agreement;*
 - (ii) *Water use Entitlement;*
 - (iii) *Water rate and assessment on volumetric basis;*
 - (iv) *Rights of member of the Water Users' Association;*
 - (v) *Rights of Water Users' Association;*
 - (vi) *Recovery of water charges;*
 - (vii) *Previous dues;*
 - (viii) *Maintenance and Repairs of Canal System;*
 - (ix) *Maintenance and Repairs of field channels and field drains;*
 - (x) *Special incentives, if any, given by Appropriate Authority from time to time;*
 - (xi) *Resolution of conflicts;*
 - (xii) *Period of Agreement;*
 - (xiii) *Termination or Revision of Agreement;*
 - (xiv) *Joint inspections, rehabilitation, schedule of balance work and handing over, etc;*
 - (xv) *Compensation;*
 - (xvi) *Penalties;*



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(xvii) *Technical guidance and training;*

(xviii) *All other matters as prescribed which need to be provided for carrying out the purposes of this Act, in the Agreement under this Act.*

MMISF Act, (2005) Rules 2006: Provision 18 of the Rules reads as follows:

Supply of Water as per entitlement - The applicable water entitlement as decided by the Maharashtra Water Resources Regulatory Authority (MWRRA) or the River Basin Agency (RBA) shall be supplied from time to time as per the Agreement to the Water Users' Association at appropriate level. It shall be responsibility of Canal Officer to monitor and ensure that every member of the Water Users' Association receives the quantum of water as per applicable water entitlement.

MWRRA (Conduct of Business) Regulations, 2010: Provision at

11. Proceedings of the Regulations reads as follows:

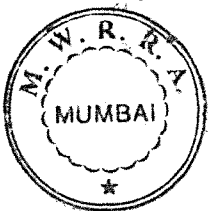
(ii) *The following categories of Bulk Water Users only are eligible to petition the Authority*

- a. *Water User Associations at minor level, distributary level, canal level, project level, natural flow system;*
- b. *Domestic Water User Utilities such as the Maharashtra Jivan Pradhikaran, Maharashtra Industrial Development Corporation, Municipal Corporations, Urban Local Bodies, Gram Panchayats;*
- c. *Industrial Users such as Maharashtra Industrial Development Corporation, privately owned industrial estates,*
- d. *Other individual Bulk Water users having an agreement with the Water Resource Department.*
- e. *Any registered organisation representing officially the interests of any of the above.*

FRAMING OF ISSUES

8. Considering the written and oral submission made by the parties, the Authority has framed following issues in this matter:

- i) Whether this Petition has a *locus standi*?
- ii) Whether the Petitioner is eligible for granting quota under Section 12 (6) of the MWRRA Act 2005?



iii) Whether it is necessary to set aside the Order of the PDRO?

FINDINGS OF THE MWRRA

9. Findings of the Authority on the above matter are as follows:

i) **Whether this Petition has a *locus standi*?**

The Applicants have filed the Petition in their individual capacity. Hence as per the clause 11 of the MWRRA (Conduct of Business) Regulation 2010, Applicants are not eligible to petition this Authority.

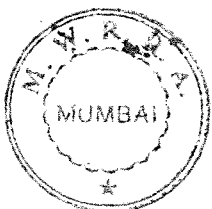
ii) **Whether the Petitioner is eligible for granting quota under Section 12 (6) of the MWRRA Act 2005?**

As per the provisions in Section 31A of the MWRRA (Amendment & Continuance) Act 2011, the entitlements are applicable to such areas where the compliance of all relevant provisions including delineation of area under the MMISF Act, 2005 is made.

In this particular case, although compliance of Section 5 & 6 of the MMISF Act, 2005 is made, the compliance of Section 8 (Registration of the WUA), Section 21 (Signing of the agreement between canal officer & WUA) and Section 23 (Installation of measuring devices) is still awaited. Also, the Authority has not given the applicable entitlement under Section 11(o) of the MWRRA Act, 2005. As such Petitioners are not yet entitled for water rights under Section 12(6) of the MWRRA Act, 2005.

iii) **Whether it is necessary to set aside the Order of the PDRO?**

The PDRO in his order dated September 11, 2017 has shown his inability to grant Petitioners' pray of water rights under Section 12(6) of the MWRRA Act, 2005 as the area is not yet handed over to Water Users Associations (WUA) and the agreement between Canal Officer and WUA is yet to be signed. This decision of the PDRO is correct in the existing legal framework. However, the PDRO in his order has given direction to expedite the process of formation of WUA, construction of discharge measuring devices and providing lining to the canal where seepage is considerable. Thus PDRO has taken care of the grievances of the Petitioner to the possible extent within the framework of the law. Hence it is not necessary to set aside the order of the PDRO dated September 11, 2017.



Sub.

ORDER

In view of the findings of the Authority in Para No. 9 above, the Applicants are not yet entitled to water rights under Section 12(6) of the MWRRA Act, 2005. Respondents are directed to expedite the pending compliance of Section 31A of the MWRRA (Amendment & Continuance) Act 2011 in respect of Bhalavani Branch No. 2 of Nira Right Bank Canal and shall submit entitlement proposal to the Authority. The Respondents are further directed to strictly follow the provisions in the Section 12(7) of the MWRRA Act, 2005 as to distribution of water from tail to head.

Respondents are also directed to prepare agenda note for the consideration of the Canal Advisory Committee strictly following the provisions in the Maharashtra Irrigation Act (1976), MWRRA Act (2005) and MMISF Act (2005); and shall bring the provisions in the Para 2.8 of the WRD's GR dated march 18, 2016 to the notice of the Canal Advisory Committee.

In view of this, both the Petitions stand disposed of.



(V. M. Kulkarni)
Member (WR. Engg.)



(K. P. Bakshi)
Chairman



